

# **MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION**

**January 10, 2006**

**The Rhode Island Ethics Commission held its 1st meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, January 10, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**James Lynch, Sr., Chair James V. Murray**

**Barbara Binder, Vice Chair Patricia M. Moran\***

**George E. Weavill, Jr., Secretary James C. Segovis**

**Richard E. Kirby\* Ross Cheit**

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Kathy D'Arezzo, Senior Staff Attorney; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.**

**At approximately 9:05 a.m., the Chair opened the meeting.**

**\* Commissioner Moran arrived at 9:06 a.m.**

**The first order of business was to approve the minutes of the Open Session held on November 22, 2005. Upon motion made by Commissioner Binder, duly seconded by Commissioner Murray, it was**

**VOTED: To approve the minutes of the Open Session held on November 22, 2005.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V. Murray, James C. Segovis, and Ross Cheit.**

**ABSTENTION: Patricia M. Moran.**

**\* Commissioner Kirby arrived at approximately 9:07 a.m.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.**

**The first advisory opinion was that of Chief Anthony J. Silva, the Chairman of the Police Officers Commission on Standards and Training (the POST Commission). The petitioner was present as was Colonel Steven Pare, a member of the POST Commission who**

appeared on its behalf. Staff Attorney Gramitt presented the Commission Staff memorandum. Staff Attorney Gramitt pointed out that Chief Silva had recently come before the Commission regarding an unrelated advisory opinion request.

Chief Silva remarked that he believed that the Ethics Commission was supplied with all of the facts and that he would be happy to answer any questions. Colonel Pare informed the Commission that he was appearing on behalf of the POST and would present arguments on behalf of the POST in support of the hardship exception. Colonel Pare stated that Colonel McCartney, the Acting Chair of the POST Commission, could not attend the meeting due to a contractual obligation. Colonel Pare explained that the POST Commission is made up of four police chiefs and a town manager, and that the Rhode Island Municipal Police Training Academy (Academy) has three permanent staff members in addition to the Director position.

He related to the Commission the interviewing process for the Director position. He stated that the position was published locally and regionally; however, he informed that he did not know the names of the publications. He informed that the posting provided general requirements for applicants. He stated that the POST received 24 applications and interviewed 7 applicants. He explained that the POST applied additional, subjective qualification requirements to the applicants interviewed.

**Colonel Pare then argued that a substantial hardship exists. He stated that the training and Academy is currently suffering without a Director and that the Academy staff is burdened. He pointed out that the Academy has been without leadership for an entire year and that there is a limited pool of potentially qualified individuals given that the position requires knowledge of Rhode Island police training, experience cooperating with other academies, knowledge of CELA, a vision and plan for the Academy, budget experience, and other qualifications.**

**In addition, Colonel Pare expressed his opinion that it is unlikely that another posting would yield a qualified out-of-state applicant based upon the current benefits package for such a high level position. Colonel Pare stated that another posting would also further delay the consolidation and co-location of the Providence, state, and municipal police academies. He remarked that members of the POST are also suffering without a Director because the Vice Chair of the POST is currently assisting in the oversight of the Academy. Additionally, Colonel Pare related that without a full-time Director there have been a series of unusual incidents at the Academy, specifically an allegation of second degree sexual assault against a recruit, an incident where a recruit charged that an instructor used too much force during use of force training, and an incident of inappropriate behavior of an instructor on the firing range. Colonel Pare stated that a hardship will exist until a “suitably qualified candidate” is in place**

as Director and that “no other suitably qualified candidate is currently available” other than Chief Silva.

Colonel Pare then went over the other 6 candidates interviewed by the POST. He shared that the POST found only 2 of the 7 applicants interviewed to be suitable candidates. He named the weaknesses of each of the other five candidates interviewed, referencing them only by number. He informed that the POST had begun conducting background checks on the two final candidates when one of them withdrew their application. Colonel Pare remarked that the POST members unanimously agree that a second posting of the position would not yield a suitably qualified candidate and that a second posting would only further “exacerbate” the hardship now faced by POST members, the Academy’s staff, and training.

Commissioner Segovis disclosed that he knows Colonel Pare and that he feels he can consider this request in an unbiased manner. Commissioner Kirby then disclosed that he previously worked with Chief Silva when he served as Assistant Town Solicitor of Cumberland. He noted that he has not held this position for a year and a half and can consider this request in an unbiased manner. By consensus, the Commission agreed that these two Commissioners may consider this request.

In response to Commissioner Kirby, Colonel Pare informed that there are five members of the POST and that Chief Silva stopped

participating in the POST in April of 2005. Colonel Pare also informed that Chief Silva remains a member of the POST and that Chief Silva did not draft the qualifications for the Director position. Colonel Pare indicated that the qualifications established are standard for the industry.

In response to Commissioner Murray, Colonel Pare stated that some of the 24 applicants did not meet the posted qualification requirements. In response to Commissioner Cheit, Colonel Pare informed that when he referred to the five of the seven interviewed applicants not selected as final candidates by number (specifically as numbers 3, 4, 5, 6, and 7), he was not referring to their rank order as the POST did not rank these five applicants. Colonel Pare restated the weaknesses of these five candidates, which included no budget experience, no plan for the Academy, and no vision for collaboration.

In response to Commissioner Binder, Colonel Pare stated that he was unaware of whether or not the final candidate that withdrew knew that he was a final candidate. He indicated that the background check may have given the applicant some inclination. Colonel Pare explained that the second final candidate disclosed in his interview that he was considering another position and that he would take whichever job made him an offer first. Commissioner Binder expressed her concern with this situation given that Chief Silva, as Chair of the POST, has special knowledge of the POST not available

to the other final candidates.

Colonel Pare elaborated that the application process lasted a couple of months before interviews began. He informed that the position was posted 4 to 6 weeks before all of the resumes were distributed for review. In response to Commissioner Cheit, Colonel Pare informed that another posting would likely take a minimum of 2 months, but more realistically 3 months.

In response to Chair Lynch, Colonel Pare stated that he did not know whether the same job qualifications existed when the previous Director obtained the position. Colonel Pare informed that they used job qualifications that were already in place. He indicated, however, that he did not know specifically when these qualifications were created. In response to Chair Lynch asking whether the Acting Director was fulfilling the responsibilities of the Director position, Colonel Pare informed that the Acting Director has not accomplished implementing the Select Commission's recommendations to unify the academies.

Chair Lynch stated that it is clear that the qualifications created required an applicant to have work experience in Rhode Island and that these qualifications limited the pool of qualified candidates. Chair Lynch suggested that if the qualifications were redone and the salary was raised, the POST may find another substantially qualified candidate. Colonel Pare acknowledged that more money may attract

more individuals; however, he stated that it is unlikely that more funding will be provided as the salary for the position was recently raised to the present amount and it was a struggle to get the current increase.

Chair Lynch remarked that the POST has no way of knowing whether the current problems will exist under any leadership and if they will extend into a new Director's tenure. He commented that the testimony given and documents received do not demonstrate a substantial hardship. He noted that inconvenience and delay are not a substantial hardship and that no extraordinary circumstances were presented.

Colonel Pare responded that the problems that exist are unprecedented and are more than a mere inconvenience. He stressed that the POST members do other important, full-time jobs such as a run police departments or assist a town.

Chair Lynch commented that he did not understand the problem with the current Acting Director. Colonel Pare responded that the Acting POST Chair has had to get involved in many matters related to the Academy and assist the Acting Director.

Commissioner Kirby noted that the Ethics Commission has experience with having no Executive Director. He stated that the Commission was spoiled because the Acting Director got the job



done. He pointed out that the Academy is a public safety organization and that we all want the best trained officers. He noted that many of the top police chiefs are at today's meeting and that the Academy cannot have a part-time POST member assisting the Acting Director. He stated that he would hate to see this position languish unfilled and something severe happen and the Ethics Commission be blamed.

In response to Commissioner Segovis, Chief Silva stated that he did not resign from the POST once he became interested in the Director position because he was committed to police training and he was not thinking of himself at the time. In response to Commissioner Segovis, Colonel Pare stated that there was only one out-of-state applicant for the position because there is limited interest from out-of-state and limited qualified individuals from out-of-state.

In response to Commissioner Weavill, Colonel Pare informed that he did not know how far the net was cast for advertising this position out-of-state. Colonel Pare indicated that the position was posted in the Providence Journal and with the state; however, he informed that he did not know about any advertisements in national magazines.

In response to Commissioner Weavill, Chief Silva explained the extent of his recusal from the POST and that he did not participate in meetings after April of 2005. He also informed that he attended a meeting in July, however, he clarified that his attendance was only to

publicly recuse so that his recusal would be reflected in the minutes. He stated that all phone calls made to him regarding the POST were forwarded to the POST's Vice Chair. Chief Silva further informed that he did not know how well-known his candidacy was for the Director position. He stated that he tried to keep it as quiet as possible.

Colonel Pare added that the POST accepted resumes in confidence and that the POST members did not disclose the names of applicants.

He noted that the background checks conducted may have given an indication about who the POST was considering. In response to Commissioner Kirby, Colonel Pare informed that the background check was conducted after the interviews were closed.

Commissioner Weavill pointed out that other possible applicants may not have applied if they knew Chief Silva had applied given his advantage as Chair of the POST. Commissioner Weavill commented that the purpose of the revolving door provisions of the Code is to remove even an appearance of an "old-boy network," and that such an appearance was presented by these facts.

Commissioner Binder noted that the Colonel conveyed that there was a sense of emergency to fill the position; however, she pointed out that it took 7 months to post this position and 1 year to extend an offer. She stated that she did not see a substantial hardship. Colonel Pare responded that this time frame reflects the time it took him to obtain the salary increase for the position. He informed that it took awhile as the increase faced separation of powers issues, and that it

took time to find funding and to get authorization. He stated that he was asked to seek out the increase in funding because he was the only POST member with such state experience. He commented that another request for a salary increase for the position would take another 4 to 6 months.

In response to Commissioner Cheit, Staff Attorney Gramitt informed that fast-track advisory opinions are drafted when the answer to the petitioner's request is clear based on past precedent and the Code of Ethics. He informed that he drafted a long-track opinion here because the Commission Staff try not to be policy makers or to answer questions involving credibility determinations as was presented in this request. In response to Commissioner Weavill, Staff Attorney Gramitt informed that, to his knowledge, this request involved the most major position for which a substantial hardship exception has been sought.

In response to Commissioner Murray, Colonel Pare informed that the incidents that took place recently at the Academy are unusual and he cannot recall any such incidents occurring at another time. Chair Lynch took the opportunity to thank Chief Silva and Colonel Pare for appearing before the Commission. He commented that he had no doubt that Chief Silva was qualified for the Director position.

Upon motion made by Commissioner Cheit, duly seconded by Commissioner Kirby, it was

**VOTED: To endorse Option #2 in the long-track advisory opinion, attached hereto, to Chief Anthony J. Silva, the Chairman of the POST Commission.**

**AYES: Barbara Binder, Richard E. Kirby, James V. Murray, Patricia M. Moran, and Ross Cheit.**

**NOES: James Lynch, Sr., George E. Weavill, and James C. Segovis.**

**The next advisory opinion was that of Robert A. Mancini, a former Commissioner of The Rhode Island Lottery Commission. The petitioner was present. Staff Attorney Robertson presented the Commission Staff recommendation.**

**In response to Commissioner Cheit, the petitioner informed that a municipal lottery and state lottery are the same. In response to Commissioner Weavill, the petitioner informed that he has not yet been hired and is only providing consulting services regarding website work at this time. He related that he would not share any proprietary information and that he is fully aware of his fiduciary responsibilities. Commissioner Kirby emphasized to the petitioner that he is subject to the Code of Ethics for one year after his termination.**

**Upon motion made by Commissioner Weavill, duly seconded by**

**Commissioner Binder, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Robert A. Mancini, a former Commissioner of The Rhode Island Lottery Commission.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and Ross Cheit.**

**The next advisory opinion was that of Kathleen M. McKeon, the former Assistant Director for the Department of Elderly Affairs. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.**

**Upon motion made by Commissioner Murray, duly seconded by Commissioner Segovis, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Kathleen M. McKeon, the former Assistant Director for the Department of Elderly Affairs.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and Ross Cheit.**

The next advisory opinion was that of Marie Evans Esten, who is currently employed by the University of Rhode Island as a contract employee. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation. Staff Attorney Leyden noted that this opinion was heard at the last Commission meeting and continued to today so that the Commission could ask questions of the petitioner.

The petitioner represented that her work for URI is limited to providing technical resources to two programs, specifically NEMO and the Watershed program. She informed that her tasks for each are similar and include reviewing models, developing programs, and creating maps. She stated that she provides environmental consulting work through her private company, Loon Environmental LLC. She informed that the work done by her company is similar in subject to her work done at URI; however, she stated that the work pursued by her company and URI is different.

In response to Commissioner Segovis, the petitioner informed that her company generally does not pursue the same grants as URI. In her work for URI, the petitioner informed that she does not have any contact with a URI client until after URI has the contract. She represented that she would not bid on any matters involving the two URI programs for which she works. She informed that she would only know the activities of these two URI programs and would not know whether other programs or parts of URI were bidding on a

**project.**

**In response to Commissioner Weavill, the petitioner represented that the value of her URI position in her private employment is limited to gaining experience in a particular subject area such as working with storm water controls. She stated that she would not feel intimidated to give unfavorable news to URI in her work for them because the value of her opinion is important in her work.**

**Commissioner Segovis expressed concern as to whether it was sufficient to advise the petitioner to refrain only from bidding against the two URI programs with which she worked. Staff Attorney Leyden clarified that the opinion could be amended to state that the petitioner cannot bid against any program or part of URI; however, she emphasized that the petitioner would only be aware of bids by the two URI programs with which she works, specifically NEMO and Watershed. Staff Attorney Leyden reviewed the existing language of the draft opinion.**

**Upon motion made by Commissioner Segovis, duly seconded by Commissioner Moran, it was unanimously**

**VOTED: To issue the draft advisory opinion, attached hereto, to Marie Evans Esten, who is currently employed by the University of Rhode Island as a contract employee.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and Ross Cheit.**

**The next advisory opinion was that of Glen S. Fontecchio, Chairman of the Providence Historic District Commission and a member of the Down City Design Review Commission. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.**

**The petitioner informed that since he requested this opinion the Providence Zoning Board heard his request for a use variance and found in his favor pending a favorable advisory opinion from the Ethics Commission.**

**Upon motion made by Commissioner Weavill, duly seconded by Commissioner Kirby, it was unanimously**

**VOTED: To issue the draft advisory opinion, attached hereto, to Glen S. Fontecchio, Chairman of the Providence Historic District Commission and a member of the Down City Design Review Commission.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and Ross Cheit.**



The next advisory opinion was that of William Juhr, a member of the North Smithfield Zoning Board of Review. The petitioner was not present. Staff Attorney Robertson presented the Commission Staff recommendation. Staff Attorney Robertson related to the Commission that the petitioner regretted being unable to attend as a work emergency had come up last minute.

Commissioner Kirby stated that he was informed that the petitioner has a link on the VASG website and inquired whether the Commission Staff was aware of it. Staff Attorney Robertson informed that the petitioner did not inform her of a link; however, she shared with the Commission that a gentleman was present at the meeting earlier who wanted to speak regarding this opinion because of the existent of this link. She stated that she informed this gentleman that advisory opinions are not investigative and rely solely on the representations of the petitioner. Commissioner Segovis indicated that he would like this link checked out and to ask the petitioner about it. Commissioner Binder remarked that the petitioner needs to come in.

Upon motion made by Commissioner Segovis, duly seconded by Commissioner Binder, it was unanimously

**VOTED:** To table until the next meeting the draft advisory opinion, attached hereto, to William Juhr, a member of the North Smithfield

## **Zoning Board of Review.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and Ross Cheit.**

**At approximately 11:00 a.m., upon motion was made and duly seconded, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), (a)(2), and (a)(4), to wit:**

**a.) To approve the minutes of Executive Session held on  
November 22, 2005.**

**b.) In re: Gene R. Noury,  
Complaint No. 2005-20**

**c.) In re: Stephen Durkee,  
Complaint No. 2005-21**

**d.) T. Brian Handrigan v. RIEC,  
C.A. No. PC05-3759**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and**

**Ross Cheit.**

**At approximately 11:29 a.m., the Commission returned to Open Session. Chair Lynch reported that the Commission took the following actions in Executive Session:**

**a.) Voted to approve the minutes of Executive Session held on November 22, 2005.**

**b.) Voted to initially determine that Complaint In re: Gene R. Noury, Complaint No. 2005-20, alleges fact sufficient to constitute a knowing and willful violation of the Code of Ethics.**

**c.) Voted to initially determine that Complaint In re: Stephen Durkee, Complaint No. 2005-21, alleges fact sufficient to constitute a knowing and willful violation of the Code of Ethics.**

**d.) The Commission took no action on T. Brian Handrigan v. RIEC, C.A. No. PC05-3759.**

**The next order of business was sealing the minutes of the Executive Session held on January 10, 2006. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Weavill, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on**

**January 10, 2006.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and Ross Cheit.**

**The next order of business was discussion of Commission Regulations. There was no discussion on this item.**

**Executive Director Willever suggested moving two items on the agenda, specifically the “Staff update and Discussion of Operation Compliance” and “Discussion of COGEL Conference by Commissioners and Staff” to the next meeting given the volume of materials addressed today and the subcommittee meetings. By consensus, the Commission agreed to table these items to the next Commission meeting.**

**The next order of business was the tentative meeting schedule for 2006. Executive Director Willever inquired whether the Commissioners had any proposed changes to the tentative meetings schedule. Commissioner Segovis recommended that the July 11, 2006 and August 8, 2006 meetings be cancelled. Commissioner Kirby noted that he could not attend the February 21st meeting. By consensus, the Commission agreed to cancel the July 11th and August 8th meetings.**

**The next order of business was the Director's Report. Executive Director Willever welcomed Kathy D'Arezzo back to the Commission staff and thanked Jason Gramitt for his service in her absence. He reported that there are five advisory opinions pending and six complaints.**

**The next order of business was New Business. Commissioner Lynch acknowledged Phil West, Executive Director of Common Cause, who introduced a visiting professor from Russia studying governmental ethics law in Rhode Island. The guest, who attended the entire Commission meeting, made a few comments about his observations of the meeting and that he would have much to write and teach about when he returns to Russia.**

**Commissioner Cheit inquired whether the Commission is going to address the letter provided in their packets from Phil West about the position of Common Cause on possible future regulatory proposals regarding confidentiality in the complaint process. Commissioner Binder suggested that the letter be addressed by the subcommittees during their meetings today. Commissioner Segovis suggested that the third subcommittee formulated by the Commission address confidentiality issues.**

**At approximately 11:40 a.m., upon motion made by Commissioner Kirby, duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To adjourn the meeting.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, James V. Murray, Patricia M. Moran, James C. Segovis, and Ross Cheit.**

**Respectfully submitted,**

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**George E. Weavill, Jr.**  
**Secretary**